

DOCKET FILE COPY ORIGINAL

RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

APR - 7 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Petition of Bell Atlantic for Relief)
from Barriers to Deployment of)
Advanced Telecommunications Services)

CC Docket No. 98-11

Petition of U S WEST for Relief from)
Barriers to Deployment of Advanced)
Telecommunications Services)

CC Docket No. 98-26

Petition of Ameritech for Relief from)
Barriers to Deployment of Advanced)
Telecommunications Services)

CC Docket No. 98-32

Motion to Consolidate Filing of)
Comments and Replies by the)
Association for Local)
Telecommunications Services)

[DA No. 98-513]

COMMENTS OF THE
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

CHARLES D. GRAY
General Counsel

JAMES BRADFORD RAMSAY
Assistant General Counsel

National Association of Regulatory Utility Commissioners
1100 Pennsylvania Avenue, Suite 608
Post Office Box 684
Washington, D.C. 20044

(202) 898-2200

April 6, 1998

**Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

)	
In the Matter of)	
)	
Petition of Bell Atlantic for Relief)	CC Docket No. 98-11
from Barriers to Deployment of)	
Advanced Telecommunications Services)	
)	
Petition of U S WEST for Relief from)	
Barriers to Deployment of Advanced)	CC Docket No. 98-26
Telecommunications Services)	
)	
Petition of Ameritech for Relief from)	
Barriers to Deployment of Advanced)	CC Docket No. 98-32
Telecommunications Services)	
)	
Motion to Consolidate Filing of)	
Comments and Replies by the)	[DA No. 98-513]
Association for Local)	
Telecommunications Services)	
)	

**COMMENTS OF THE
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS**

Pursuant to Sections 1.41, 1.46 and 1.44 of the Federal Communication Commission's ("FCC" or "Commission") General Rules of Practice and Procedure, 47 C.F.R. §§ 1.41, 1.46 and 1.44 (1997), the National Association of Regulatory Utility Commissioners ("NARUC") respectfully submits the following general comments in response to the separate petitions filed January 26, February 25, and March 5, 1998, by Bell Atlantic Corporation, U S WEST Communications, Inc., and Ameritech Corporation, respectively, ("Petitioners") seeking forbearance from certain provisions of the Communications Act of 1934 ("Act"), 47 U.S.C.A. § 151 et seq. (1996), Petitioners contend act as barriers to the deployment of advanced telecommunications services.

NARUC respectfully suggests that, in response to these petitions, the FCC should:

- Issue the notice of investigation required by §706 to assess the progress in deployment of advanced telecommunications capabilities to all Americans; and
- Investigate this matter fully and solicit additional ideas and options, including those put forth by States and including consideration of a means to develop State-Federal coordination strategies, before taking action on any specific remedial actions proposed in these petitions.

In support of its requests, NARUC states as follows:

I. NARUC'S INTEREST

NARUC is a quasi-governmental nonprofit organization founded in 1889. NARUC's members include the governmental bodies of the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands, which regulate carriers and utilities. These officials are charged with, among other things, the duty of regulating the telecommunications common carriers within their respective borders. That charge requires these regulators to assure the establishment of such communications services and facilities as may be required by the public convenience and necessity, and the furnishing of service at rates that are just and reasonable.

The advanced telecommunications services that are the focus of these § 706 petitions consist of both inter- and intrastate services. Indeed, many of NARUC's members have already taken action within their respective jurisdictions to accelerate deployment of advanced services. As any FCC action on these petitions under §706 could impact those and related pro-competitive State initiatives, NARUC's members have a significant interest in this proceeding.

II. DISCUSSION

In response to these petitions, the FCC should issue the notice of inquiry required by §706 to assess the progress in deployment of advanced telecommunications capabilities.

All three petitioners rely on § 706 of the Telecommunications Act of 1996 as the basis for their request for forbearance from, among others, §§ 251 and 271 of the Act. NARUC respectfully suggests, as a first step before acting on any of these petitions, the FCC is obligated to initiate a notice of inquiry ("NOI") required by that section.

Specifically, § 706(b) states, that the "*Commission **shall**, within 30 months after the date of enactment of this Act, and regularly thereafter, initiate a notice of inquiry concerning the availability of advanced telecommunications capability to all Americans . . . [to] determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion. If the Commission's determination is negative, it shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.*" {Emphasis Added}

We respectfully suggest that the directives of § 706 are both clear and logical. An obvious prerequisite to any FCC action is the creation of a record outlining the level and speed of deployment of all of the services at issue. *None of the petitions present the record support needed for immediate FCC action or raise concerns of such extraordinary gravity or urgency that could support circumvention of the statutory directives.*

Moreover, because, the advanced services at issue consist of both inter- and intrastate services and the statute clearly contemplates coordinated FCC and State actions, *a NOI is needed to minimize any unforeseen impact of FCC action.*

Section 706 (a) states that "[t]he Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . . by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment."

We believe this language highlights the need for State-Federal cooperation in the effort to achieve § 706's goals and recognizes that any precipitous action in this area could impact existing and planned State and FCC initiatives in unintended and potentially disrupting ways.

For example, petitioners want to segregate their digital loops and high speed data services from their voice-grade offerings. However, the FCC is still addressing the bandwidth requirements for voice grade offerings in a separate proceeding. Those requirements could significantly impact on the level of Internet congestion on local networks. Federal and state regulators must work together to understand the relationship of essential and advanced services offerings and consider the options for reasonable and compatible universal service goals and policies before initiating specific proposals to encourage deployment. *Any FCC regulatory actions that artificially separates voice and data network offerings could inappropriately interfere with the evolution of the Public Switched Network to the detriment of universal service and pro-competitive objectives.*

In addition, some of the petitioners' requests could, if granted, tie States' hands in arbitrating interconnection agreements and in applying certain State rules to interconnection, as well as affect the scope of State proceedings to certify BOC separate subsidiaries and consult with the FCC on BOC § 271 interLATA application for advanced services.

NARUC believes, in order to comply with § 706's requirement that the FCC {and States} act "in a manner consistent with the public interest, convenience, and necessity," an NOI is needed to allow the FCC to fully examine each affected State commission's actions to encourage infrastructure investment under the Act and the potential impact on related federal and State regulatory initiatives designed to either assure universal service or enhance competition. As noted in our March 1998 resolutions, the FCC should "investigate this matter fully and solicit additional ideas and options, including those put forth by states and including consideration of a means to develop state-federal coordination strategies, before taking action on any specific remedial actions proposed in these petitions."

II. REQUEST

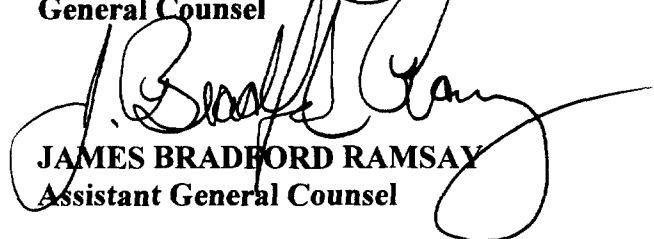
For the foregoing reasons, and in conformance with its March 4, 1998 resolution addressing these petitions {a copy of the petition is appended to these comments), NARUC respectfully suggests that, in response to these petitions, the FCC should:

- Issue the notice of investigation required by §706 to assess the progress in deployment of advanced telecommunications capabilities to all Americans; and
- Investigate this matter fully and solicit additional ideas and options, including those put forth by states and including consideration of a means to develop state-federal coordination strategies, before taking action on any specific remedial actions proposed in these petitions.

Respectfully submitted,



CHARLES D. GRAY
General Counsel



JAMES BRADFORD RAMSAY
Assistant General Counsel

**National Association of
Regulatory Utility Commissioners**

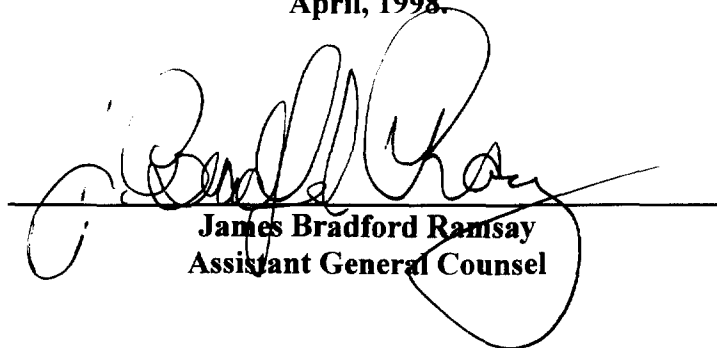
**1100 Pennsylvania Avenue, Suite 608
Post Office Box 684
Washington, D.C. 20044**

(202) 898-2200

April 6, 1998

CERTIFICATE OF SERVICE

I, JAMES BRADFORD RAMSAY, certify that I have served a copy of the foregoing on all the parties on the attached service list by first class mail, postage prepaid, this 6th day of April, 1998.



James Bradford Ramsay
Assistant General Counsel

RESOLUTION

**Resolution Regarding Petitions To The FCC
For Action Under Sec. 706**

WHEREAS, On January 26, 1998, Bell Atlantic Corporation (Bell Atlantic) filed with the Federal Communications Commission (FCC) its "Petition of Bell Atlantic Corporation for Relief from Barriers To Deployment of Advanced Telecommunications Services;" and

WHEREAS, In that petition Bell Atlantic requests under Sec. 706 of the Telecommunications Act of 1996 (the 1996 Act) that the FCC provide it relief from restrictions it believes are impeding its expansion and offering of high-speed, packet-switched data services; and

WHEREAS, On February 18, 1998, the Alliance for Public Technology (APT) petitioned the FCC to implement Sec. 706 of the 1996 ACT immediately by adopting policies to remove barriers to the deployment of advanced services, and gave several policy proposals, including exploring alternatives such as: community based strategies, state-federal cooperation and technology transfer; and

WHEREAS, Sec 706 of the 1996 Act requires the FCC to investigate the availability of advanced telecommunications capability to all Americans, and to determine whether or not the ambitious vision set forth in Sec. 706, that such capability be deployed to all Americans in a reasonable and timely fashion, is coming to fruition and Sec. 706 is an invitation to "grab the brass ring" of new technology and should not be used simply as an opportunity to pick the low level fruit; and

WHEREAS, The FCC is required to provide notice of such investigation within 30 months of enactment and to complete the investigation within 180 days; and

WHEREAS, The charge in Sec. 706 to encourage deployment of advancement of advanced service capability to all Americans is to both state commissions and the FCC, this an ideal opportunity for federal-state cooperation, and a good candidate for a state-specific joint board or a Sec. 706 task force to model various approaches and to develop coordination strategies; now, therefore, be it

RESOLVED, That the Executive Committee of the National Association of Regulatory Utility Commissioners ("NARUC"), convened at its 1998 Winter Meetings in Washington, D.C., recommends that the FCC issue the notice of investigation required under Sec. 706 of the 1996 Act to

**National Association of
Regulatory Utility
Commissioners**

1100 Pennsylvania Ave., N.W.
Suite 603
Washington, D.C. 20004

MAILING ADDRESS
Post Office Box 684
Washington, D.C. 20044-0684

202.898.2200
202.898.2213 Fax
<http://www.naruc.org>

assess the progress in deployment of advanced telecommunications capabilities to all Americans; and be it further

RESOLVED, That the NARUC urges the FCC to investigate this matter fully and solicit additional ideas and options, including those put forth by states and including consideration of a means to develop state-federal coordination strategies, before taking action on any specific remedial actions proposed in the petitions of Bell Atlantic and APT; and be it further

RESOLVED, That the NARUC General Counsel be directed to file and take any appropriate actions to further the intent of this resolution.

Sponsored by the Committee on Communications
Adopted March 4, 1998